

STATE OF MICHIGAN  
DEPARTMENT OF LABOR & ECONOMIC GROWTH  
OFFICE OF FINANCIAL AND INSURANCE SERVICES

Before the Commissioner of Financial and Insurance Services

In the Matter Of:

Bruce Auten and  
Susan Auten

Enforcement Case No. 98-164  
Docket No. 98-1237

Respondents

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*Issued and entered  
on March 7, 2005  
by Linda A. Watters  
Commissioner*

**CONSENT ORDER AND STIPULATION**

**A. Findings of fact and conclusions of law**

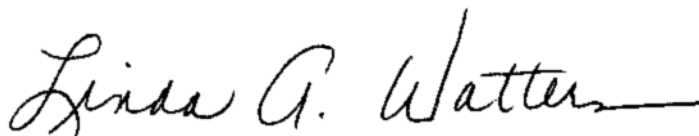
1. On December 17, 1998, the Commissioner issued an Order Referring Complaint for Hearing and Order to Remand which had attached thereto a Complaint signed by Deputy Commissioner Carlson.
2. The Complaint alleged that the Respondents had received and failed to remit monies owing to insureds in violation of Section 1207(1).
3. An employee of the Respondents, XXXX, plead guilty to having embezzled monies from the Respondents.
4. Subsequently, criminal proceedings were instituted against the Respondents.
5. The proceedings on the Complaint were then stayed pending a resolution of the criminal proceedings which had been commenced against the Respondents.
6. Following the preliminary examination, the district court refused to bind the Respondents over for trial. At the conclusion of the examination the prosecution appealed. The circuit court remanded for more specific findings and conclusions. After the filing of more definite findings and conclusions, the prosecution again appealed. The prosecution then determined that the conclusions of the district court were correct and dismissed its own appeal.

7. At the preliminary examination, the prosecution needed only to present some evidence regarding each element of the crime or evidence from which the elements could be inferred. When the evidence conflicts or raises a reasonable doubt concerning guilt, these are questions for the trier of fact, and the defendant should be bound over. People v. Cotton, 191 Mich.App. 377, 384, 478 N.W.2d 681 (1991).
8. The conclusion of the district court judge that the evidence was insufficient to justify the binding over of the Respondents indicates that the prosecutor was unable to present even a reasonable belief that Respondents might be guilty.
9. However, from review of the records of the Respondents' agency, a preponderance of the evidence indicates that Respondents may have failed to use reasonable accounting methods to record funds received by them in their fiduciary capacity in violation of Section 1207(2) of the Michigan Insurance Code.
10. Respondents have consented to dismissal of the allegations of the Complaint and to the amendment of the Complaint to allege that Respondents failed to use reasonable accounting methods to record funds received by them in their fiduciary capacity in violation of Section 1207(2) of the Code.
11. The failure to use reasonable accounting methods permitted an employee of Respondents to embezzle funds belonging to insureds.
12. Respondents have made restitution to all insureds of all amounts which were owed them.
13. Respondents have sold off their business and retired from the insurance business and no longer reside in the State of Michigan. Respondents state that they do not in good faith intend to act as agents.
14. Respondents are willing to voluntarily surrender their licenses and agree to voluntarily surrender their licenses as a means of resolving this matter. Respondents have indicated that they have no interest in applying for licensure in the future and agree that they will not apply for licensure in the future.
15. By reason of the fact that Respondents have sold off their business and have retired, have stated that they no longer intend to act as agents, and Respondents have stated that they are willing to voluntarily surrender their licenses, and have no interest in applying for licensure in the future, the Commissioner finds that the Respondents no longer intend in good faith to act as agents in violation of Section 1204(4) of the Michigan Insurance Code.

## **B. ORDER**

Based on the findings of fact and conclusions of law above and Respondents' stipulation, it is ORDERED that:

15. Respondents shall immediately cease and desist from operating in such a manner as to violate Sections 1207(2) and 1204(4) (now 1239(1)(h) of the Michigan Insurance Code.
16. Respondents' licenses are cancelled.
17. The allegations of the Complaint are dismissed with prejudice and the Complaint is amended to allege that the Respondents failed to use reasonable accounting methods to record funds received by them in their fiduciary capacity in violation of Section 1207(2) of the Code.

A handwritten signature in black ink that reads "Linda A. Watters". The signature is written in a cursive, flowing style with a long horizontal line extending from the end.

*Linda A. Watters*  
*Commissioner*